

APPEAL NO. 010004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). On November 28, 2000, a hearing was held. The hearing officer decided that the appellant's (claimant) compensable right knee and low back injury of _____, does not extend to include an injury to the left knee. The claimant appealed. The respondent (carrier) responded.

DECISION

We affirm in part, and reverse and remand in part.

On appeal, as he did at the hearing, the claimant asserted alternate theories of recovery. The claimant asserted that he sustained an injury to his left knee on _____, at the same time as he sustained the injuries to his right knee and his low back. The claimant alternatively asserted that he had sustained what is commonly referred to as a "follow on" injury to his left knee by reason of an altered gait due to his right knee injury and also by reason of falls caused by the weakened condition of his right knee and numbness in his legs as a result of the low back injury.

In the statement of the evidence, the hearing officer recognizes that the claimant asserted that he injured his left knee when he was pushed from the loading dock by his supervisor, landing on top of the left knee. The hearing officer notes that the claimant's testimony was refuted by the carrier and contradicted the report of how the injury occurred which was set forth in the employer's first report of injury. The statement of the evidence then goes on to state that the claimant asserted that the left knee was injured by overuse after surgery to the right knee and by subsequent falls as a result of the claimant's right knee locking and buckling. In essence, the claimant has alleged three unique mechanisms by which he asserts that his left knee has been injured and attributes his left knee's current condition on the combination of mechanisms of injury.

The hearing officer made two findings of fact in addition to the stipulations of the parties. Those findings were as follows:

2. Claimant did not sustain an injury to his left knee which naturally flowed from the injury sustained in the course and scope of his employment on _____.
3. The medical evidence is insufficient to establish a causal connection between the Claimant's claimed injury to his left knee and his compensable injury of _____.

The hearing officer then, in a conclusion of law, states that the claimant's "injury sustained on _____ does not extend to include an injury to the left knee."

The hearing officer's determination that the claimant did not sustain a follow-on injury to his left knee is supported by the evidence. While another finder of fact may have drawn different inferences from the evidence, the hearing officer's determination that the claimant's left knee injury is not a compensable follow-on injury is not so against the great weight of the other evidence as to be clearly wrong or manifestly unjust and we will not substitute our judgment for his. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We affirm the hearing officer's determination that the claimant's left knee injury is not a compensable follow-on injury.

We are, however, troubled that the hearing officer made no findings of fact or conclusions of law on the claimant's theory that he injured his left knee in the fall of _____. That issue was litigated by the parties and is a separate and distinct theory of recovery which necessitates findings of fact and conclusions of law.

The hearing officer's finding of fact that the medical evidence was insufficient to establish a causal connection between the left knee injury (the "claimed injury") and the right knee and low back injuries ("his compensable injury of _____") seems to merely speak to the assertion of the alleged follow-on injury. If it were intended to address the claimant's theory of recovery that the left knee was injured contemporaneously with the right knee (which we do not believe it does), then the hearing officer has foisted an incorrect burden of proof on the claimant by requiring medical proof. While medical corroboration of an injury is always welcome, an injury may be proven by lay evidence alone unless the injury is of such a nature as to require expert evidence to establish a causal connection between the injury and the employment. We, therefore, reverse the hearing officer's decision and remand the matter to the hearing officer to make additional findings of fact and conclusions of law on the single issue of whether the claimant sustained an injury to his left knee in the course and scope of his employment on _____, when he was pushed from the loading dock.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Workers' Compensation Commission's Division of Hearings,

pursuant to Section 410.202. See Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

Kenneth A. Huchton
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge